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No. 838

In the Supreme Court of the United States

OCTOBER TERM, 1958

NORTH AMERICAN VAN LINES, INC., PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Claims (Pet. 27-33) is reported at 169 F. Supp. 252.

JURISDICTION

The judgment of the Court of Claims was entered on January 14, 1959. (Pet. 27, 33.) The petition for a writ of certiorari was filed on April 14, 1959. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1255(1).

QUESTION PRESENTED

Whether the schedule of "taxable gross weights" contained in Treasury Regulations on Highway Motor Vehicle Use, Section 41.4482(b)-1, as promulgated and applied by the Commissioner of Internal Revenue, is a valid exercise of the authority expressly vested in the Commissioner by Section 4482(b) of the Internal Revenue Code of 1954.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of Sections 4481 and 4482 of the Internal Revenue Code of 1954 and Section 41.4482(b)-1 of Treasury Regulations on Highway Motor Vehicle Use are printed in the Appendix, *infra*, pp. 8-13.

STATEMENT

Sections 4481 and 4482 of the Internal Revenue Code of 1954, impose a tax at the rate of $1.50 per thousand pounds of taxable gross weight on the use of all highway motor vehicles with a taxable gross weight of over 26,000 pounds. As pertinent here, Section 4482(b) defines taxable gross weight as the sum of the unloaded weight of a motor vehicle and the trailers customarily pulled by such vehicle, plus the weight of the maximum load customarily carried on the same type of vehicles and trailers. Authority is specifically granted the Secretary of the Treasury to determine taxable gross weight by Regulations, including formulas or other methods for determining taxable gross weight by classes, specifications, or otherwise.

Pursuant to this authority, Regulations were adopted which set forth a schedule of taxable gross weights for highway motor vehicles. Section 41.4482 (b)-1 of Treasury Regulations on Highway Motor Vehicle Use. This schedule divides all highway motor vehicles into three primary classifications, namely, single units, combinations, and buses. The schedule subdivides the class of combinations into seven types lettered D through J, and, as required by Section 4482(b), attributes to each type a specified taxable gross weight.

The facts are undisputed. The taxpayer is an Indiana corporation engaged in hauling household goods by using combination vehicles which fall within types D, E and F of the schedule with a taxable gross weight of 30,000, 40,000, and 50,000 pounds, respectively. For the period July-November 1956, the taxpayer computed and paid its highway use tax on the basis of the taxable gross weights prescribed in the schedule, and subsequently brought this action claiming a refund of a portion of the taxes so paid.[1] (Pet. 27, 29.)

It was stipulated that the taxable gross weights set forth in the schedule fairly and accurately represent the average maximum loaded weights for the trucking industry as a whole. It was further stipulated that the taxpayer's vehicles falling within type D carried actual loads which, when added to

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[1] In its petition for certiorari, the taxpayer has abandoned as *de minimis* the refund claimed for the tax paid for vehicles in Class D. (Pet. 3.)

the actual weight of the truck-tractor and trailer actually used, amounted to actual gross weights of 25,800 to 29,000 pounds. Actual weights for the taxpayer's type E vehicles varied between 28,400 and 31,600 pounds, and its loaded type F vehicles actually weighed from 27,700 to 37,100 pounds. (Pet. 30-31.)

The Court of Claims (Pet. 27-33) rejected the argument that the schedule of taxable gross weights was arbitrary and unconstitutional, and upheld both the statute and the Treasury Regulations.

ARGUMENT

The tax imposed by Section 4481 of the Internal Revenue Code of 1954, Appendix, *infra*, pp. 8-9, is on the use of highway motor vehicles exceeding a certain "taxable gross weight". That term is defined (Section 4482(b) Appendix, *infra*, pp. 9-10) as the sum of (1) "the actual unloaded weight" of the fully equipped vehicle (and of fully equipped trailers customarily used in connection with the same type of vehicle), and (2) "the weight of the maximum load customarily carried" on vehicles and trailers "of the same type".

The taxpayer in this case claims a refund of a portion of a highway use tax because the actual loaded weights of its vehicles during the taxable period were substantially less than the taxable gross weights attributed to such vehicles by the schedule contained in Section 41.4482(b)-1 of the applicable Treasury Regulations, Appendix, *infra*, pp. 10-13. This schedule of taxable gross weights, which the taxpayer con-

tends is arbitrary, was promulgated as part of the Regulations authorized by Section 4482(b) of the Internal Revenue Code of 1954, Appendix; *infra*, pp. 9-10:

> Taxable gross weight shall be determined under regulations prescribed by the Secretary or his delegate (which regulations may include formulas or other methods for determining the taxable gross weight of vehicles by classes, specifications, or otherwise).

The schedule, which conforms to this statutory mandate, has been upheld both in this case and by the Court of Appeals for the Third Circuit in *Atlas Transportation Co. v. United States*, 263 F. 2d 573. Concededly (Pet. 8), there is no conflict.

As here pertinent, the schedule is a factual determination made by the Commissioner, with the assistance of the Bureau of Public Roads, that a truck-tractor of given specifications customarily pulls a trailer or semitrailer of a certain size which in turn customarily carries a maximum load of such a weight that the "taxable gross weight" of the entire vehicle can be stated. (Pet. 35-36.) The parties have stipulated that the schedule is an accurate classification of the nation's trucking industry. (Pet. 31.) Moreover, it was based on detailed information, and adopted only after proposed regulations were issued and modified after public hearings. (Pet. 35-39.) The concept of "taxable gross weight" is one which was newly created by statute, and by the terms of the statute this concept is not controlled by the actual loaded weights

of highway motor vehicles. Since actual weights do not control the amount or incidence of this tax, the fact that the taxpayer's loaded vehicles actually weighed less than their "taxable gross weights" is immaterial.

In this context, the schedule of taxable gross weights does not contain, as taxpayer suggests, a conclusive presumption of fact contrary to the Fifth Amendment of the Constitution as interpreted in *Heiner* v. *Donnan*, 285 U.S. 312.[2] The statute and Regulations presume nothing with respect to actual loaded weights of vehicles, but simply measure the tax in part by the weight of trailers customarily pulled and of the "maximum load customarily carried." Similarly, there is no merit to the taxpayer's contention that, contrary to *Hoeper* v. *Tax Commission*, 284 U.S. 206, the amount of this tax was determined by reference to facts applying to unrelated taxpayers. The tax is levied on this taxpayer's use of its highway motor vehicles, and, as the statute prescribes, is measured by the type of vehicle used and the maximum load such vehicle customarily carries.

Congress having expressly delegated to the Treasury authority to issue regulations fixing the "tax-

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[2] It is not clear from the petition whether the taxpayer attacks the Regulations on the ground that the statute pursuant to which they were issued is unconstitutional, or on the ground that the Regulations go beyond the statute. At any rate, as both the court below (Pet. 33) and the Third Circuit in *Atlas* observed (263 F. 2d at 575), no serious constitutional question is presented.

able gross weight" of motor vehicles "by classes, specifications, or otherwise" for purposes of the highway use tax (Section 4482(b)), the implementing Treasury Regulations are clearly within the scope of the delegated authority. Cf. *Douglas* v. *Commissioner*, 322 U.S. 275. And since the Treasury's schedule of "taxable gross weights" is not arbitrary but reflects a reasonable classification determined in accordance with the statutory standards, the court below correctly sustained the validity of the Regulations. *Atlas Transportation Co.* v. *United States*, *supra*.[3]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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MAY, 1959.

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[3] As the Court of Appeals for the Third Circuit stated in *Atlas*, "The criterion is not weight in pounds as scales would show it, but the application of the legislative concept 'taxable gross weight,' which is not the same thing at all. If the classification is not unreasonable, the tax is good. No conclusive presumption of facts is involved." (263 F. 2d at 577.)

APPENDIX

Internal Revenue Code of 1954:

SEC. 4481. [As added by Sec. 206, Highway Revenue Act of 1956, c. 462, 70 Stat. 374, 387]. IMPOSITION OF TAX.

(a) *Imposition of Tax.*—A tax is hereby imposed on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of more than 26,000 pounds, at the rate of $1.50 a year for each 1,000 pounds of taxable gross weight or fraction thereof.

(b) *By Whom Paid.*—The tax imposed by this section shall be paid by the person in whose name the highway motor vehicle is, or is required to be, registered under the law of the State in which such vehicle is, or is required to be, registered, or, in case the highway motor vehicle is owned by the United States, by the agency or instrumentality of the United States operating such vehicle.

(c) *Proration of Tax.*—If in any year the first use of the highway motor vehicle is after July 31, the tax shall be reckoned proportionately from the first day of the month in which such use occurs to and including the 30th day of June following.

(d) *One Payment per Year.*—If the tax imposed by this section is paid with respect to any highway motor vehicle for any year, no further tax shall be imposed by this section for such year with respect to such vehicle.

(c) *Period Tax in Effect.*—The tax imposed by this section shall apply only to use after June 30, 1956, and before July 1, 1972.

(26 U.S.C. 1952 ed., Supp. V, Sec. 4481.)

SEC. 4482. [as added by Sec. 206, Highway Revenue Act of 1956, *supra*]. DEFINITIONS.

(a) *Highway Motor Vehicle.*—For purposes of this subchapter, the term "highway motor vehicle" means any motor vehicle which is a highway vehicle.

(b) *Taxable Gross Weight.*—For purposes of this subchapter, the term "taxable gross weight", when used with respect to any highway motor vehicle, means the sum of—

(1) the actual unloaded weight of—

(A) such highway motor vehicle fully equipped for service, and

(B) the semitrailers and trailers (fully equipped for service) customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle, and

(2) the weight of the maximum load customarily carried on highway motor vehicles of the same type as such highway motor vehicle and on the semitrailers and trailers referred to in paragraph (1)(B).

Taxable gross weight shall be determined under regulations prescribed by the Secretary or his delegate (which regulations may include formulas or other methods for determining the tax-

able gross weight of vehicles by classes, specifications, or otherwise).

* * * *

(26 U.S.C. 1952 ed., Supp. V, Sec. 4482.).

Treasury Regulations on Highway Motor Vehicle Use (1954 Code):

§ 41.4482(b)-1 DEFINITION OF TAXABLE GROSS WEIGHT.—(a) *In general.*—The tax imposed on the use of a highway motor vehicle (of a taxable gross weight in excess of 26,000 pounds) is based on the taxable gross weight of such highway motor vehicle. Taxable gross weight of a highway motor vehicle is determined with reference to the sum of (1) the actual unloaded weight of such highway motor vehicle (fully equipped for service); (2) the actual unloaded weight of any one or more trailers or semitrailers (fully equipped for service) customarily used in combination with highway motor vehicles of the same type as such highway motor vehicle; and (3) the weight of the maximum load customarily carried on highway motor vehicles of the same type as such highway motor vehicle and on any one or more trailers or semitrailers customarily used in combination with highway motor vehicles of the same type as such highway motor vehicle.

(b) *Meaning of terms.*—For purposes of the schedule of taxable gross weights prescribed in paragraph (c) of this section—

(1) The term "actual unloaded weight" means the empty (or tare) weight of the truck, truck-tractor, or bus, fully equipped for service.

(2) The term "fully equipped for service" includes body (whether or not designed and adapted primarily for transporting cargo, as for example, concrete mixers); all accessories; all equipment attached to or carried on such truck, truck-tractor, or bus, for use in connection with the movement of the vehicle by means of its own motor or for use in the maintenance of the vehicle; and a full complement of lubricants, fuel, and water. The term does not include driver, any equipment (not including body) attached to or carried on the vehicle for use in handling or transporting cargo; or any special equipment (such as an air compressor, crane, specialized oil-field machinery, etc.) mounted on the vehicle for use on construction jobs, in oil-field operations, etc.

(c) *Schedule of taxable gross weights.*—The following schedule of taxable gross weights, based on the sum of the weights referred to in paragraph (a) of this section, is hereby prescribed:

USE TAX SCHEDULE

		Taxable gross weight (in pounds)
1. Single Units		
(A)	2 axled truck equipped for use as a single unit with actual unloaded weight of 13,000 pounds or more	27,000
(B)	3 or 4 axled truck equipped for use as a single unit with actual unloaded weight of at least 13,000 pounds and less than 16,000 pounds	30,000
(C)	3 or 4 axled truck equipped for use as a single unit with actual unloaded weight of 16,000 pounds or more	40,000
2. Combinations		
(D)	2 axled truck-tractor with actual unloaded weight of at least 5,500 pounds and less than 7,000 pounds	30,000
(E)	2 axled truck-tractor with actual unloaded weight of at least 7,000 pounds and less than 9,500 pounds	40,000
(F)	2 axled truck-tractor with actual unloaded weight of 9,500 pounds or more	50,000
(G)	2 axled truck with actual unloaded weight of at least 9,000 pounds and less than 12,000 pounds and equipped for use in combinations	40,000
(H)	2 axled truck with actual unloaded weight of 12,000 pounds or more and equipped for use in combinations	55,000
(I)	3 or 4 axled truck equipped for use in combinations	60,000
(J)	3 or 4 axled truck-tractor	60,000
3. Buses	Actual unloaded weight of vehicle plus 150 pounds for each unit of seating capacity provided for passengers and driver.	

Any highway motor vehicle which falls in one of the categories shown in such schedule shall be considered, for purposes of the regulations in this part, to have the taxable gross weight assigned to such category. Any highway motor vehicle which does not fall in one of the categories shown in such schedule shall be considered, for purposes of the regulations in this part, to have a taxable gross weight of 26,000 pounds or less.